

Union Calendar No. 204

104TH CONGRESS
1ST Session

H. R. 1747

[Report No. 104-398]

A BILL

To amend the Public Health Service Act to permanently extend and clarify malpractice coverage for health centers, and for other purposes.

DECEMBER 12, 1995

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

JUNE 6, 1995

Mrs. JOHNSON of Connecticut (for herself, Mr. WYDEN, and Mr. FRANK of Massachusetts) introduced the following bill; which was referred to the Committee on Commerce

DECEMBER 12, 1995

Additional sponsors: Mr. GOSS, Mr. SANDERS, Mr. BARRETT of Wisconsin, Mr. CALLAHAN, Mr. EHLERS, Mr. WILLIAMS, Mr. STUPAK, Mr. MASCARA, Mr. HASTERT, Mr. KOLBE, Mr. GUTIERREZ, Mr. TAUZIN, Mrs. COLLINS of Illinois, Mr. WAXMAN, Mr. SERRANO, Mr. ENGEL, Mr. WICKER, Mr. MOORHEAD, Mr. GREENWOOD, Ms. PELOSI, Ms. MOLINARI, Mr. DINGELL, Mr. TEJEDA, Mr. PAYNE of Virginia, Mr. BONIOR, Mr. DELLUMS, Mr. BLUTE, Mr. STENHOLM, Mrs. KELLY, Mr. KILDEE, Mr. PASTOR, and Mr. KENNEDY of Rhode Island

DECEMBER 12, 1995

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on June 6, 1995]

A BILL

To amend the Public Health Service Act to permanently

extend and clarify malpractice coverage for health centers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCES.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the*
 5 *“Federally Supported Health Centers Assistance Act of*
 6 *1995”.*

7 (b) *REFERENCES.*—*Except as otherwise expressly pro-*
 8 *vided, whenever in this Act an amendment or repeal is ex-*
 9 *pressed in terms of an amendment to, or repeal of, a section*
 10 *or other provision, the reference shall be considered to be*
 11 *made to a section or other provision of the Public Health*
 12 *Service Act.*

13 **SEC. 2. EXTENSION OF PROGRAM.**

14 (a) *IN GENERAL.*—*Section 224(g)(3) (42 U.S.C.*
 15 *233(g)(3)) is amended in the last sentence by striking “Jan-*
 16 *uary 1, 1996” and inserting “January 1, 1999”.*

17 (b) *CONFORMING AMENDMENTS.*—*Section 224(k) (42*
 18 *U.S.C. 233(k)) is amended—*

19 (1) *in paragraph (1)(A), by striking “each of the*
 20 *fiscal years 1993, 1994, and 1995” and inserting*
 21 *“each of the fiscal years 1996 through 1998”; and*

22 (2) *in paragraph (2), by striking “each of the*
 23 *fiscal years 1993, 1994, and 1995” and inserting*
 24 *“each of the fiscal years 1996 through 1998”.*

1 **SEC. 3. CLARIFICATION OF COVERAGE.**

2 *Section 224(g)(1) (42 U.S.C. 233(g)(1)) is amended—*

3 *(1) in the first sentence, by striking “officer, em-*
 4 *ployee, or contractor” and inserting “officer, govern-*
 5 *ing board member, or employee of such an entity, and*
 6 *any contractor”; and*

7 *(2) in the second sentence, by inserting after “of-*
 8 *ficer,” the following “governing board member,”.*

9 **SEC. 4. COVERAGE FOR SERVICES FURNISHED TO INDIVID-**
 10 **UALS OTHER THAN CENTER PATIENTS.**

11 *Section 224(g)(1) (42 U.S.C. 233(g)) is amended—*

12 *(1) by redesignating paragraph (1) as para-*
 13 *graph (1)(A); and*

14 *(2) by adding at the end thereof the following:*

15 *“(B) The deeming of any entity or officer, governing*
 16 *board member, employee, or contractor of the entity to be*
 17 *an employee of the Public Health Service under subpara-*
 18 *graph (A) shall apply with respect to services provided—*

19 *“(i) to all patients of the entity, and*

20 *“(ii) subject to subparagraph (C), to individuals*
 21 *who are not patients of the entity.*

22 *“(C) Subparagraph (B)(ii) applies to services provided*
 23 *to individuals who are not patients of an entity if the Sec-*
 24 *retary determines, after reviewing an application submitted*
 25 *under subparagraph (D), that the provision of the services*
 26 *to such individuals—*

1 “(i) benefits patients of the entity and general
2 populations that could be served by the entity through
3 community-wide intervention efforts within the com-
4 munities served by such entity;

5 “(ii) facilitates the provision of services to pa-
6 tients of the entity; or

7 “(iii) are otherwise required under an employ-
8 ment contract (or similar arrangement) between the
9 entity and an officer, governing board member, em-
10 ployee, or contractor of the entity.”.

11 **SEC. 5. APPLICATION PROCESS.**

12 (a) *APPLICATION REQUIREMENT.*—Section 224(g)(1)
13 (42 U.S.C. 233(g)(1)) (as amended by section 4) is further
14 amended—

15 (1) in subparagraph (A), by inserting “and sub-
16 ject to the approval by the Secretary of an applica-
17 tion under subparagraph (D)” after “For purposes of
18 this section”; and

19 (2) by adding at the end thereof the following:

20 “(D) The Secretary may not deem an entity or an offi-
21 cer, governing board member, employee, or contractor of the
22 entity to be an employee of the Public Health Service under
23 subparagraph (A), and may not apply such deeming to
24 services described in subparagraph (B)(ii), unless the entity
25 has submitted an application for such deeming to the Sec-

1 retary in such form and such manner as the Secretary shall
2 prescribe. The application shall contain detailed informa-
3 tion, along with supporting documentation, to verify that
4 the entity, and the officer, governing board member, em-
5 ployee, or contractor of the entity, as the case may be, meets
6 the requirements of subparagraphs (B) and (C) of this
7 paragraph and that the entity meets the requirements of
8 paragraphs (1) through (4) of subsection (h).

9 “(E) The Secretary shall make a determination of
10 whether an entity or an officer, governing board member,
11 employee, or contractor of the entity is deemed to be an
12 employee of the Public Health Service for purposes of this
13 section within 30 days after the receipt of an application
14 under subparagraph (D). The determination of the Sec-
15 retary that an entity or an officer, governing board mem-
16 ber, employee, or contractor of the entity is deemed to be
17 an employee of the Public Health Service for purposes of
18 this section shall apply for the period specified by the Sec-
19 retary under subparagraph (A).

20 “(F) Once the Secretary makes a determination that
21 an entity or an officer, governing board member, employee,
22 or contractor of an entity is deemed to be an employee of
23 the Public Health Service for purposes of this section, the
24 determination shall be final and binding upon the Sec-
25 retary and the Attorney General and other parties to any

1 *civil action or proceeding. Except as provided in subsection*
 2 *(i), the Secretary and the Attorney General may not deter-*
 3 *mine that the provision of services which are the subject*
 4 *of such a determination are not covered under this section.”.*

5 *(b) APPROVAL PROCESS.—Section 224(h) (42 U.S.C.*
 6 *233(h)) is amended—*

7 *(1) in the matter preceding paragraph (1), by*
 8 *striking “Notwithstanding” and all that follows*
 9 *through “entity—” and inserting the following: “The*
 10 *Secretary may not approve an application under sub-*
 11 *section (g)(1)(D) unless the Secretary determines that*
 12 *the entity—”; and*

13 *(2) by striking “has fully cooperated” in para-*
 14 *graph (4) and inserting “will fully cooperate”.*

15 ***SEC. 6. TIMELY RESPONSE TO FILING OF ACTION OR PRO-***
 16 ***CEEDING.***

17 *Section 224 (42 U.S.C. 233) is amended by adding*
 18 *at the end thereof the following subsection:*

19 *“(l)(1) If a civil action or proceeding is filed in a State*
 20 *court against any entity described in subsection (g)(4) or*
 21 *any officer, governing board member, employee, or any con-*
 22 *tractor of such an entity for damages described in sub-*
 23 *section (a), the Attorney General, within 15 days after*
 24 *being notified of such filing, shall make an appearance in*
 25 *such court and advise such court as to whether the Secretary*

1 *has determined under subsections (g) and (h), that such en-*
2 *tity, officer, governing board member, employee, or contrac-*
3 *tor of the entity is deemed to be an employee of the Public*
4 *Health Service for purposes of this section with respect to*
5 *the actions or omissions that are the subject of such civil*
6 *action or proceeding. Such advice shall be deemed to satisfy*
7 *the provisions of subsection (c) that the Attorney General*
8 *certify that an entity, officer, governing board member, em-*
9 *ployee, or contractor of the entity was acting within the*
10 *scope of their employment or responsibility.*

11 “(2) *If the Attorney General fails to appear in State*
12 *court within the time period prescribed under paragraph*
13 *(1), upon petition of any entity or officer, governing board*
14 *member, employee, or contractor of the entity named, the*
15 *civil action or proceeding shall be removed to the appro-*
16 *priate United States district court. The civil action or pro-*
17 *ceeding shall be stayed in such court until such court con-*
18 *ducts a hearing, and makes a determination, as to the ap-*
19 *propriate forum or procedure for the assertion of the claim*
20 *for damages described in subsection (a) and issues an order*
21 *consistent with such determination.”.*

1 **SEC. 7. APPLICATION OF COVERAGE TO MANAGED CARE**
2 **PLANS.**

3 *Section 224 (42 U.S.C. 223) (as amended by section*
4 *6) is amended by adding at the end thereof the following*
5 *subsection:*

6 *“(m)(1) An entity or officer, governing board member,*
7 *employee, or contractor of an entity described in subsection*
8 *(g)(1) shall, for purposes of this section, be deemed to be*
9 *an employee of the Public Health Service with respect to*
10 *services provided to individuals who are enrollees of a man-*
11 *aged care plan if the entity contracts with such managed*
12 *care plan for the provision of services.*

13 *“(2) Each managed care plan which enters into a con-*
14 *tract with an entity described in subsection (g)(4) shall*
15 *deem the entity and any officer, governing board member,*
16 *employee, or contractor of the entity as meeting whatever*
17 *malpractice coverage requirements such plan may require*
18 *of contracting providers for a calendar year if such entity*
19 *or officer, governing board member, employee, or contractor*
20 *of the entity has been deemed to be an employee of the Pub-*
21 *lic Health Service for purposes of this section for such cal-*
22 *endar year. Any plan which is found by the Secretary on*
23 *the record, after notice and an opportunity for a full and*
24 *fair hearing, to have violated this subsection shall upon*
25 *such finding cease, for a period to be determined by the*
26 *Secretary, to receive and to be eligible to receive any Fed-*

1 eral funds under titles XVIII or XIX of the Social Security
2 Act.

3 “(3) For purposes of this subsection, the term ‘man-
4 aged care plan’ shall mean health maintenance organiza-
5 tions and similar entities that contract at-risk with payors
6 for the provision of health services or plan enrollees and
7 which contract with providers (such as entities described
8 in subsection (g)(4)) for the delivery of such services to plan
9 enrollees.”.

10 **SEC. 8. COVERAGE FOR PART-TIME PROVIDERS UNDER**
11 **CONTRACTS.**

12 Section 224(g)(5)(B) (42 U.S.C. 223(g)(5)(B)) is
13 amended to read as follows:

14 “(B) in the case of an individual who normally
15 performs an average of less than 32½ hours of serv-
16 ices per week for the entity for the period of the con-
17 tract, the individual is a licensed or certified provider
18 of services in the fields of family practice, general in-
19 ternal medicine, general pediatrics, or obstetrics and
20 gynecology.”.

21 **SEC. 9. DUE PROCESS FOR LOSS OF COVERAGE.**

22 Section 224(i)(1) (42 U.S.C. 233(i)(1)) is amended by
23 striking “may determine, after notice and opportunity for
24 a hearing” and inserting “may on the record determine,
25 after notice and opportunity for a full and fair hearing”.

1 **SEC. 10. AMOUNT OF RESERVE FUND.**

2 *Section 224(k)(2) (42 U.S.C. 223(k)(2)) is amended by*
3 *striking “\$30,000,000” and inserting “\$10,000,000”.*

4 **SEC. 11. REPORT ON RISK EXPOSURE OF COVERED ENTI-**
5 **TIES.**

6 *Section 224 (as amended by section 7) is amended by*
7 *adding at the end thereof the following subsection:*

8 *“(n)(1) Not later than April 1, 1997, the Secretary,*
9 *in consultation with the Attorney General, shall submit to*
10 *the Congress a report on the medical malpractice liability*
11 *claims experience of entities that have been deemed to be*
12 *employees for purposes of this section, and the risk exposure*
13 *associated with such entities.*

14 *“(2) The report under paragraph (1) shall include an*
15 *analysis by the Secretary comparing—*

16 *“(A) the Secretary’s estimate of the aggregate*
17 *amounts that such entities (together with the officers,*
18 *governing board members, employees, and contractors*
19 *of such entities who have been deemed to be employees*
20 *for purposes of this section) would have directly or in-*
21 *directly paid to obtain medical malpractice liability*
22 *insurance coverage if this section were not in effect;*
23 *with*

24 *“(B) the aggregate amounts by which the grants*
25 *received by such entities under this Act were reduced*
26 *pursuant to subsection (k)(2).*

1 “(3) *In preparing the report under paragraph (1), the*
2 *Secretary shall consult with public and private entities*
3 *with expertise on the matters with which the report is*
4 *concerned.*”.

Amend the title so as to read: “A bill to amend the Public Health Service Act to extend and clarify malpractice coverage for health centers, and for other purposes.”.